

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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CITY OF LIVONIA EMPLOYEES'  
RETIREMENT SYSTEM, individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BOEING COMPANY, W. JAMES  
McNERNEY, JR. and SCOTT E. CARSON,

Defendants.

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Case No. 1:09-cv-07143

Judge Suzanne B. Conlon

**DEFENDANTS' MOTION TO DISMISS THE  
SECOND AMENDED COMPLAINT**

The Boeing Company, W. James McNerney, Jr. and Scott E. Carson ("Defendants") hereby move this Court to dismiss with prejudice Plaintiffs' Second Amended Complaint ("SAC") in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of their motion, Defendants incorporate and rely upon their accompanying Memorandum of Law, and further state:

1. Plaintiffs' Second Amended Complaint purports to assert claims on behalf of persons who purchased the publicly-traded securities of The Boeing Company between May 3, 2009 and June 22, 2009. Count One alleges that Defendants made misrepresentations and omissions of material fact in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Count Two asserts a claim under Section 20(a) of the Securities Exchange Act of 1934, which imposes joint liability on any person who "controls" another person liable under the Act.

2. Plaintiffs' claims fail under the demanding requirements of the Private Securities Litigation Reform Act ("PSLRA") and settled Supreme Court and Seventh Circuit precedent.

3. Plaintiffs' Section 10(b) claim should be dismissed because Plaintiffs have failed to allege with particularity facts sufficient to support, as the PSLRA requires, a "strong inference" that any of the Defendants made any alleged false or misleading statement or omission with scienter (intent to defraud).

4. Plaintiffs' Section 10(b) claim should also be dismissed because the Second Amended Complaint impermissibly relies on "forward-looking statements" and "puffery." Under the PSLRA, forward-looking statements that are identified as such and accompanied by cautionary language are not actionable. 15 U.S.C. § 78u-5(c)(1)(A)-(B) (2010). Furthermore, under settled Seventh Circuit precedent, general statements about the status of an ongoing process are non-actionable puffery.

5. Plaintiffs' Section 10(b) claim should also be dismissed because the Second Amended Complaint engages in impermissible "group pleading." Plaintiffs fail to provide individualized factual allegations regarding each defendant's state of mind. Instead, Plaintiffs allege that Messrs. McNerney and Carson's liability arises from their positions in the company and involvement with the 787 program. This is insufficient to establish scienter under the PSLRA.

6. Finally, Plaintiffs' claim for "control person" liability against each Defendant under Section 20(a) of the Securities Exchange Act should be dismissed because these claims are derivative of the Section 10(b) claims and, as set forth above, Plaintiffs have not stated a claim for primary liability under Section 10(b).

WHEREFORE, for each of the foregoing reasons and for the reasons stated in Defendants' supporting memorandum, Defendants respectfully request that the Court dismiss the Second Amended Complaint in its entirety, with prejudice.

Dated: July 2, 2010

Respectfully submitted,

/s/ Mark Filip

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**CERTIFICATE OF SERVICE**

I, Mark Filip, hereby certify that on July 2, 2010, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** was filed electronically with the Northern District of Illinois - Eastern Division. Notice of this filing has been sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system. A courtesy copy has also been sent via e-mail to the following counsel of record, and additional counsel noted below via overnight mail with courtesy copy via email:

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